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Sunset Reviews
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Reviews of the Antidumping Duty Orders on
Silicomanganese from Brazil, Ukraine, and the People's Republic
of China

Summary

We have analyzed the substantive responses of the domestic interested party in the second sunset reviews of the antidumping duty orders covering silicomanganese from Brazil, Ukraine, and the People's Republic of China (PRC).¹ We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Orders

In 1994, the Department of Commerce (Department) published its final affirmative determinations of sales at less than fair value in the Federal Register with respect to imports of silicomanganese from Brazil, Ukraine, and the PRC at the following rates:

Brazil

Rio Doce Manganês S.A. (RDM),	<u>Margin (%)</u>
Companhia Paulista de Ferro-Ligas (CPFL),	
and Urucum Mineração S.A. (Urucum)	
(collectively RDM/CPFL)	64.93

¹ We received no responses from respondent interested parties.

All Others 17.60

Ukraine

All Manufacturers/Producers/Exporters 163.00

The People's Republic of China

All Manufacturers/Producers/Exporters 150.00

See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Brazil, 59 FR 55432, 55434 (November 7, 1994); Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Ukraine, 59 FR 62711 (December 6, 1994); Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from the People's Republic of China, 59 FR 55435 (November 7, 1994). The Department published antidumping duty orders on silicomanganese from Brazil and the PRC and the suspension of the antidumping duty investigation and the suspension agreement on silicomanganese from Ukraine in the Federal Register. See Notice of Antidumping Duty Order: Silicomanganese from Brazil, 59 FR 66003 (December 22, 1994); Notice of Antidumping Duty Order: Silicomanganese from the People's Republic of China, 59 FR 66003 (December 22, 1994); Antidumping: Silicomanganese from Ukraine; Suspension of Investigation, 59 FR 60951 (November 29, 1994). The Department later terminated the suspension agreement and issued an antidumping duty order on silicomanganese from Ukraine, effective September 17, 2001. See Suspension Agreement on Silicomanganese from Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order, 66 FR 43838 (August 21, 2001).

Since the issuance of the order, the Department has not conducted an administrative review of sales of silicomanganese from Ukraine. The Department has completed one administrative review of sales of silicomanganese from the PRC prior to the first sunset review. See Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000). The Department has completed four administrative reviews of sales of silicomanganese from Brazil. See Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 37869 (July 15, 1997); Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004); Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 70 FR 19418 (April 13, 2005); Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 71 FR 2516 (January 17, 2006).

There have been no changed-circumstances reviews or duty-absorption inquiries of the three orders. (Duty-absorption inquiries may not be conducted on pre-URAA² orders. See *FAG Italia S.p.A. v. United States*, 291 F.3d 806 (Fed. Cir. 2002).) In addition, there have been no scope rulings on the subject merchandise covered by the orders. The orders remain in effect for

² URAA refers to the Uruguay Round Agreements Act.

all manufacturers, producers, and exporters of silicomanganese from Brazil, Ukraine, and the PRC.

The Department conducted the first sunset reviews of the orders on silicomanganese from Brazil and the PRC and the suspended antidumping investigation on silicomanganese from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). We found that revocation of the antidumping duty orders and termination of the suspended antidumping investigation would be likely to lead to continuation or recurrence of dumping at the same percentage weighted-average margins as it found in the original investigations. See Silicomanganese from the People's Republic of China and Brazil: Final Results of Antidumping Duty Expedited Sunset Reviews, 65 FR 35324 (June 2, 2000), and Silicomanganese from Ukraine: Final Results of Full Sunset Review, 65 FR 58045 (September 27, 2000). The International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of the orders on silicomanganese from Brazil and China and termination of the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Silicomanganese from Brazil, China, and Ukraine, 66 FR 8981 (February 5, 2001), and USITC Pub. 3386, Inv. No. 731-TA-671-673 (Review) (January 2001). Accordingly, the Department published the notice of continuation of these antidumping duty orders and suspended antidumping duty investigation pursuant to section 777(I)(1) of the Act. See Continuation of Antidumping Duty Orders on Silicon Metal from Brazil and China and on Silicomanganese from Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Silicomanganese from Ukraine, 66 FR 10669 (February 16, 2001). As described above, on August 21, 2001, the Department terminated the suspension agreement and issued an antidumping duty order on silicomanganese from Ukraine, effective September 17, 2001.

On January 3, 2006, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on silicomanganese from Brazil, Ukraine, and the PRC pursuant to section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 71 FR 91 (January 3, 2006). The Department received a notice of intent to participate in all three reviews from the sole domestic interested party, Eramet Marietta Inc. (Eramet), within the time specified in 19 CFR 351.218(d)(1)(i). Eramet claimed interested-party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States. We received complete substantive responses from Eramet within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties in any of these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited (120-day) sunset reviews of these orders.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider the weighted-average dumping

margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty orders or acceptance of the suspension agreement. In addition, section 752(c)(3) of the Act provides that the Department shall provide the ITC with the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested-Party Comments

On February 2, 2006, Eramet submitted a substantive response in each sunset review. In its response, Eramet asserts that revocation of the antidumping duty orders would lead to a continuation of dumping by manufacturers, producers, and exporters of the subject merchandise from Brazil, Ukraine, and the PRC.

Brazil: Eramet states that, after the imposition of the antidumping duty order on silicomanganese from Brazil, the level of imports of the subject merchandise fell dramatically from annual levels ranging from 64,774 metric tons (MT) in 1993 (the year the petition was filed) to 21,373 MT in 1994 (the year the order was published) and then to 137 MT in 1995. Eramet adds that there were no imports from 1996 to 1998, imports of 20 MT and 15 MT in 1999 and 2000, respectively, no imports in 2001, and imports of 43 MT, 42 MT, and 54 MT in 2002, 2003, and 2004, respectively. Finally, for January through November 2005, Eramet asserts that there were no imports of silicomanganese from Brazil. See Eramet Substantive Response for silicomanganese from Brazil at 5. It comments that, over the life of the order, the margin determined by the Department for the sole respondent first increased from 64.93 percent in the investigation to 88.87 percent in the first administrative review and then declined to 13.02 percent in the 2001-2002 administrative review and zero in the two most recent administrative reviews. *Id.* Eramet concludes that, since the imposition of the order, imports of silicomanganese from Brazil have declined greatly and ultimately ceased during the most recent period. In accordance with the Department's Policies Regarding the Conduct of Five-year (Sunset) Review of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Policy Bulletin 98:3), Eramet argues that the Department should determine that revocation of the antidumping duty order on silicomanganese from Brazil is likely to lead to continuation or recurrence of dumping. *Id.*

Ukraine: Eramet states that the level of imports of silicomanganese fell dramatically from 37,642 MT in 1993 (the year the petition was filed) to a total of 92 MT from the time the order was issued (August 2001) through November 2005 (the most recent month for which import data are available). See Eramet Substantive Response for silicomanganese from Ukraine at 5. Eramet states that no administrative review of the antidumping duty order on silicomanganese from Ukraine has been conducted. Thus, it contends, no exporter has demonstrated that it can ship Ukrainian silicomanganese to the United States without dumping.

In accordance with Policy Bulletin 98:3, Eramet argues, the Department should determine that revocation of the antidumping duty order on silicomanganese from Ukraine is likely to lead to continuation or recurrence of dumping. Id.

The People's Republic of China: Eramet states that, after the imposition of the antidumping duty order on silicomanganese from the PRC, the level of imports of the subject merchandise fell dramatically from 51,193 MT in 1993 (the year the petition was filed) to 15,486 MT in 1994 (the year the order was published) and that there were no imports for the next eight years from 1994 through 2002. Eramet states that, in 2003 and 2004, imports of silicomanganese from the PRC totaled 850 MT and 19 MT, respectively. From January through November 2005, it contends, there were no imports of silicomanganese from the PRC. See Eramet Substantive Response for silicomanganese from the PRC at 5. Eramet argues further that the Department has completed only one administrative review and determined dumping margins of 182.97 percent for Sichuan Emei Ferroalloy Import and Export Co., Ltd. (Emei), and 126.22 percent for Guangxi Bayi Ferroalloy Works (Bayi), respectively. Thus, Eramet argues, there has been dumping of silicomanganese from the PRC at levels above *de minimis* after the issuance of the order. In accordance with Policy Bulletin 98:3, Eramet argues that the Department should determine that revocation of the antidumping duty order on silicomanganese from the PRC is likely to lead to continuation or recurrence of dumping.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood of recurrence or continuation of dumping will be made on an order-wide basis. In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.

In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

Below we list our findings for each order subject to the reviews:

Brazil: Using Bureau of Census import statistics (Attachment A) provided by Eramet, the Department finds that the quantity of silicomanganese imported from Brazil decreased substantially post-order and remains well below pre-order levels. See attached import statistics. Given that dumping has occurred and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

Ukraine: Using Bureau of Census import statistics (Attachment B) provided by Eramet, the Department finds that the quantity of silicomanganese imported from Ukraine decreased substantially post-order and remains well below pre-order levels. See attached import statistics. Given that no administrative review has been conducted and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

The People's Republic of China: Using Bureau of Census import statistics (Attachment C) provided by Eramet, the Department finds that the quantity of silicomanganese imported from the PRC decreased substantially post-order and remains well below pre-order levels. Given that dumping exists at above *de minimis* levels and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested-Party Comments

_____*Brazil:* In the substantive response for silicomanganese from Brazil, Eramet states that the Department should provide the margin calculated in the original investigation to the ITC. See Substantive Response for silicomanganese from Brazil at 8. Accordingly, it recommends that the Department report the following dumping margins to the ITC:

<u>Brazil</u>	
RDM/CPFL	64.93
All Others	17.60

_____*Ukraine:* In the substantive response for silicomanganese from Ukraine, Eramet states that the Department should provide the margin calculated in the original investigation to the ITC. See Substantive Response for silicomanganese from Ukraine at 6. Accordingly, it recommends that the Department report the following dumping margin to the ITC:

<u>Ukraine</u>	
All Manufacturers/Producers/Exporters	163.00

_____*The People's Republic of China:* Eramet states that the Department determined a 150-percent margin for all exporters of silicomanganese from the PRC. Eramet adds that the Department has completed only one administrative review and determined dumping margins of 182.97 percent for Emei and 126.22 percent for Bayi, respectively. Eramet argues that, because the margin the Department calculated for Emei in the administrative review is higher than the rate from the original investigation, in accordance with Policy Bulletin 98:3 the Department should find that the margin of dumping that is likely to prevail for Emei is the 182.97-percent margin determined in the review. In the case of Bayi, Eramet argues, the company does not fall

under either of the two exceptions to the Department's normal practice of selecting the all-others rate from the investigation for companies not specifically examined in the investigation. See Eramet Substantive Response for silicomanganese from the PRC at 7. Accordingly, it recommends that the Department report the following dumping margins to the ITC:

The PRC

Emei	182.97
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All Other Manufacturers/Producers/Exporters	150.00
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Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin that is likely to prevail if the order were revoked. Normally the Department will provide the company-specific margins from the original investigation to the ITC. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department will normally provide a margin based on the "all others" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an antidumping duty order or suspension agreement in place. Under certain circumstances, however, the Department may select a margin calculated more recently to report to the ITC.

We determine that the margins from the original investigations are probative of the behavior of Chinese, Ukrainian, and Brazilian manufacturers and exporters of silicomanganese if the orders were revoked because they are the only calculated rates which reflect the behavior of exporters without the discipline of the orders in place. We do not agree that the use of a more recently calculated margin from the only administrative review of the PRC company Emei is appropriate. Given the small amount of sales volume made during the administrative review and absent argument and company-specific data indicating that Emei chose to increase dumping in order to maintain or increase market share, the Department will provide the ITC with the 150-percent rate determined in the original investigation. In the case of Bayi, we agree that we have no evidence of a decline in dumping accompanied with a steady or increased level of imports. As such, we find that the margin of dumping that is likely to prevail for Bayi if the order were revoked is the margin of 150 percent determined in the investigation. Therefore, the Department will report to the ITC the margins listed in the "Final Results of Reviews" section below.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on silicomanganese from Brazil, Ukraine, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
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Brazil

RDM/CPFL	64.93
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All Others	17.60
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Ukraine

All Manufacturers/Producers/Exporters	163.00
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The PRC

All Manufacturers/Producers/Exporters	150.00
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Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)

Attachments